## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

KEVIN E. KNOX	)
Claimant	)
VS.	)
	) Docket No. 230,665
EBY CONSTRUCTION	)
Respondent	)
AND	)
	)
ST. PAUL FIRE & MARINE INSURANCE COMPANY	, ) ,
Insurance Carrier	)

## ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish on April 15, 1998.

## Issues

Claimant was injured on January 13, 1998, when he was struck by a coworker. The sole issue on appeal is whether claimant's injuries arose out of and in the course of his employment.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the ALJ should be affirmed.

The evidence about why the coworker struck the claimant is unclear. On the one hand, it appears the coworker was upset about the way claimant was doing his work. On the other hand, it appears the coworker was upset about the attention a young lady was focusing on the claimant and/or other workers.

The ALJ found the claim compensable because, shortly before the accident, the coworker had asked the supervisor if he could have five minutes alone with the claimant. The ALJ concluded, and the Board agrees, that the question was likely asked of the supervisor in a manner which suggested that the coworker wanted to do more than talk. The supervisor, nevertheless, implied that this would be okay. The claim should therefore

be considered compensable under the rationale described in <u>Harris v. Bethany Medical</u> Center, 21 Kan. App. 2d 804, 909 P.2d 657 (1995).

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Jon L. Frobish on April 15, 1998, should be, and the same is hereby, affirmed.

II IS SO ORDERED.
Dated this day of May 1998.
BOARD MEMBER

c: Andrew E. Busch, Wichita, KS Gregory D. Worth, Lenexa, KS Jon L. Frobish, Administrative Law Judge Philip S. Harness, Director